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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91221038
Party	Defendant Western Rise, LLC
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	06/15/2015
Attachments	First Amended Answer, Defenses, and Counterclaim (Western Rise).pdf(114338 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Abercrombie & Fitch Trading Co.,)	
)	Opposition No. 91221038
Opposer,)	
)	Serial Nos. 86292364 (Filed May 27, 2014)
v.)	and 86293112 (Filed May 28, 2014)
)	
)	Subject Marks:
)	
Western Rise, LLC,)	
)	
Applicant.)	
)	
)	

**FIRST AMENDED ANSWER, DEFENSES, AND COUNTERCLAIM
OF APPLICANT WESTERN RISE, LLC**

COMES NOW Applicant Western Rise, LLC (“Applicant”) and files its First Amended Answer, Defenses, and Counterclaim to Opposer Abercrombie & Fitch Trading Co.’s (“Opposer”) Notice of Opposition, showing the Trademark Trial and Appeal Board (the “Board”) as follows:

I. ANSWER

Applicant answers the individually numbered paragraphs of the Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice of Opposition.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice of Opposition.

3. Applicant admits that the online records of the United States Patent and Trademark Office show Opposer as the current owner of the trademarks listed in Paragraph 3 of the Notice of Opposition. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 3 of the Notice of Opposition pertaining to actual ownership of the trademarks.

4. Paragraph 4 of the Notice of Opposition contains legal conclusions to which no response is required. Applicant is without knowledge or information sufficient to form a belief as to the underlying facts that would establish the truth or falsity of the legal conclusions contained in Paragraph 4 of the Notice of Opposition.

5. Applicant admits that the online records of the United States Patent Office show that declarations of incontestability were filed and acknowledged with respect to the marks referenced in Paragraph 5 of the Notice of Opposition. Paragraph 5 of the Notice of Opposition contains legal conclusions to which no response is required. Applicant is without knowledge or information sufficient to form a belief as to the underlying facts that would establish the truth or falsity of the legal conclusions contained in Paragraph 5 of the Notice of Opposition.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice of Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Notice of Opposition. Answering further, Applicant states that, upon information and belief, Opposer has abandoned some or all of the Moose Marks.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Notice of Opposition. Answering further, Applicant states that, upon information and belief, Opposer has abandoned some or all of the Moose Marks.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Notice of Opposition. Answering further, Applicant states that, upon information and belief, Opposer has abandoned some or all of the Moose Marks.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of Opposition.

11. Applicant admits the allegations contained in Paragraph 11 of the Notice of Opposition.

12. Applicant admits the allegations contained in Paragraph 12 of the Notice of Opposition.

13. Applicant admits the allegations contained in Paragraph 13 of the Notice of Opposition.

Likelihood of Confusion

14. Applicant denies the allegations contained in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations contained in Paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations contained in Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations contained in Paragraph 17 of the Notice of Opposition.

18. Applicant admits that it filed the applications for the opposed trademarks more than ten years after the filing dates of some of the trademarks identified by Opposer. Applicant denies the remaining allegations contained in Paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations contained in Paragraph 19 of the Notice of Opposition.

Dilution

20. Applicant denies the allegations contained in Paragraph 20 of the Notice of Opposition.

21. Applicant denies the allegations contained in Paragraph 21 of the Notice of Opposition.

22. Applicant denies the allegations contained in Paragraph 22 of the Notice of Opposition.

General Denial

Applicant denies each and every factual allegation contained in the Notice of Opposition that is not expressly admitted in the preceding paragraphs of this Answer.

II. DEFENSES

First Defense

The Notice of Opposition fails to state a claim upon which relief can be granted.

Second Defense

The trademarks asserted as the basis for Opposer's Notice of Opposition have been abandoned.

III. COUNTERCLAIM

Applicant hereby asserts this Counterclaim against Opposer, showing the Board as follows:

1. Opposer has identified numerous registrations for moose designs in its Notice of Opposition (the "Moose Marks"), which Opposer pleads in support of its opposition to Applicant's trademark applications.

2. As reported by the Wall Street Journal on August 29, 2014, Opposer's then-CEO, Mike Jeffries, announced on conference call regarding the company's financial performance that Abercrombie & Fitch would "take the North American logo business to practically nothing" in the 2015 spring season. Similar news was reported by numerous other reputable media outlets.

3. In an article entitled "Boom! Abercrombie & Fitch Drops Its Logo," Forbes magazine reported the following: "In a surprising move, the company has announced that with the spring 2015 season it will drop any identifying marks in the US stores."

4. In an article entitled "The Abercrombie Moose Logo May Be an Endangered Species in America," an online fashion media source named Complex Style reported the following:

According to Abercrombie Chief Executive Officer Mike Jeffries, the brand is abandoning its logos (Abercrombie's moose and Hollister's seagull) on American clothing next year. "In the spring season, we're looking to take the North American logo business to practically nothing, but protect logo in international stores," he said.

Abercrombie bigwigs have realized that America no longer wants to wear clothing emblazoned with their name and logos, so they've decided to phase out Abercrombie's current visual identity in the U.S.

5. In an August 29, 2014 article entitled "Drop the Logo: Abercrombie & Fitch Ditches Identity to Regain Fashion Cred," BrandChannel reported the following:

Say goodbye to the ubiquitous moose silhouette and serif-laced font: Abercrombie & Fitch is going logo-less as a last-ditch effort to get teen shoppers back in its stores.

After reporting its tenth-straight decline in quarterly sales this week, troubled A&F CEO Mike Jeffries said the retailer is “looking to take the North American logo business to practically nothing” after the brand had already cut logo-wear by 50 percent. By spring, A&F hopes to look a little more like the products seen inside fast-fashion houses like H&M, Zara and Forever 21: basic, and fashion—not brand—forward.

6. In a news segment that aired on the Today television program, NBC reported that Abercrombie & Fitch “is making some big changes, including ditching logos on most of its clothing.”

7. In an article entitled “Nothing Seems To Be Working For Abercrombie & Fitch,” the Huffington Post reported the following: “Abercrombie & Fitch is trying everything to get teens and college kids to come back to its stores. It’s eliminating clothes with logos, rolling out new store designs and culling underperforming locations while attempting to cut \$200 million in costs.”

8. Upon information and belief, Opposer has not addressed, clarified, or refuted the aforementioned media reports and has not sought any correction or retraction of those reports.

9. Upon information and belief, the statements by Abercrombie & Fitch’s CEO, as well as Opposer’s failure and refusal to address these voluminous media reports in any way, signify that Opposer ceased using the Moose Marks in the United States in Classes 18, 25, or 35 or otherwise in connection with goods related to those identified in Applicant’s trademark applications in the spring of 2015, without any intention to resume use.

10. Upon information and belief, to the extent that goods bearing the Moose Marks are currently offered for sale in the United States in connection with goods in Classes 18, 25, or 35, such “use” constitutes merely token use designed to reserve Opposer’s rights in the Moose Marks, not the bona fide use in the ordinary course of trade.

11. Upon information and belief, Opposer’s abandonment of the Moose Marks has rendered the registrations for those marks subject to cancellation or restriction.

12. Applicant hereby seeks the cancellation of those Moose Marks registered in Class 18, 25 or 35, on grounds that they have been abandoned.

WHEREFORE, Applicant requests that: (a) the Board enter judgment in favor of Applicant as to Opposer’s claims; (b) the Board enter judgment in favor of Applicant as to Applicant’s counterclaim; (c) Applicant’s trademarks be registered on the Principal Register; and (d) Applicant receive such other, further or different relief as the Board deems just and proper.

[Signature of counsel appears on the next page.]

Respectfully submitted this 15th day of June, 2015.

ARNALL GOLDEN GREGORY LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **FIRST AMENDED ANSWER, DEFENSES, AND COUNTERCLAIM OF APPLICANT WESTERN RISE, LLC** has been served on counsel for Opposer by mailing said copy on June 15, 2015 by first class mail, postage prepaid to:

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/ J. Tucker Barr /

Attorney for Applicant